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No. 98-1106

IN THE

Supreme Court of the United States

October Term, 1998

ACM PARTNERSHIP,
SOUTHAMPTON-HAMILTON COMPANY,
TAX MATTERS PARTNER,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

On Petition for a Writ of Certiorari To the United States Court of Appeals For the Third Circuit

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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In the Petition filed by ACM Partnership, petitioner noted that a recent case from the Tax Court, *ASA Investerings Partnership v. Commissioner*, 76 T.C.M. (CCH) 325, 1998 Tax Ct. Memo LEXIS 303 (1998), demonstrated the threat to the orderly administration of the tax law created by the Third Circuit's decision in this case. Specifically, petitioner noted that *ASA Investerings* involved transactions similar to ACM's; however, in that case both the Commissioner and the Tax Court respected the economic substance of the installment sale transactions after concluding that the foreign entity in the ASA partnership was not a partner. The Commissioner's position and the Tax Court's decision in *ASA Investerings* therefore resulted in an acceleration of taxable income for U.S. taxpayers pursuant to § 453. In describing that case, petitioner noted that the ASA partnership "held notes similar to the Citicorp Notes for only six days." Petition at 23.

Petitioner recently discovered that that statement was inaccurate. According to the *ASA Investerings* decision, the partnership in question held some notes that were similar to the Citicorp Notes in the *ACM Partnership* case for 22 days and it held other such notes for 29 days. *See* 76 T.C.M. at ___, 1998 Tax Ct. Memo LEXIS at *17-18. Although this error does not affect the point addressed in the Petition, petitioner files this Brief to bring the error to the attention of the Court and respondent.

Respectfully submitted,

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February 5, 1999